IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2903 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NEW SWADESHI MILLS

Versus

TEXTILE LABOUR ASSO

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Appearance:

1. Special Civil Application No. 2903 of 1995

MS PJ DAVAWALA for Petitioner No. 1

MR DS VASAVADA for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 20/09/2004

ORAL JUDGEMENT

Heard learned advocate Ms. P.J. Davawala on behalf of the petitioner and learned advocate Mr.D.S.Vasavada for respondent.

In the present petition, the petitioner has challenged the order passed by the labour court, Ahmedabad in Application No.1913 of 1986 dated 28th February, 1994 whereby the application of the respondent was allowed and it was directed to the petitioner to pay the legal dues and the amount of compensation to the workman within period of 30 days. The said order was challenged in Appeal being Appeal NO.20 of 1994 before the Industrial Court, Ahmedabad. The Industrial Court, Ahmedabad has dismissed the appeal filed by the Mill company on 1st February, 1995. Therefore, the petitioner being aggrieved of the both these orders, challenged the same in the present petition.

This Court, at the time of issuing Rule on 28th July, 1995, has passed the following order.

"Oral Order : The learned Counsel for the petitioner has placed reliance on section 5[2] of the Gujarat Closed Textiles Undertakings [Notionalisation] Act, 1986, according to which, no liability in relation to the specified textile undertakings in respect of any period prior to the appointed day is enforceable against the State Government or the Corporation. it is not in dispute that the liability relates to the period prior to the taking over the New Swadeshi Mills taken over by the Gujarat State Textile Corporation. It has also been submitted that an identical petition involving similar questions, that is, Special Civil Application No.9889 of 1992 has already been admitted. Hence, Rule returnable on 4th September, 1995. To be heard with Special Civil Application No.9889 of 1992. The learned counsel for the respondent pointed out that in terms of the order passed by this Court on 19th April, 1995, sum of Rs.15,000/[Rupess Fifteen Thousand only ] has already been deposited by the petitioner. Since the amount had already been deposited, it is directed that the said amount of Rs.15,000/- be kept in Fixed Deposit in any Nationalised Bank for a period of three years an the amount of monthly interest earned thereon may be allowed to be withdrawn and paid to the concerned workman Shri Babubhai Ramjibhai Bhavsar month by month or as and when it becomes due and payable under the terms of such Fixed Deposit Receipt. The principal amount of the Fixed Deposit Receipt will have to be dealt with in terms of the

directions which may ultimately be issued by the Court at the time of conclusion of this litigation. Mr.Vasavada, learned counsel for the respondent waives service of rule on behalf of the respondent."

Thus, pursuant to the aforesaid order, this Court has directed the petitioner to deposit Rs.15,000/- before this Court and interest accrue upon the said amount, to be paid to the workman concerned as and when it becomes due and payable as per the terms of the FDR. The contention raised by the learned advocate Ms.Davawala is that in provident fund form during the administration of the previous management, the workman had mentioned his age 35 years old and that form was filled up on 21st January, 1957 and accordingly, the age of the concerned workman on 17.6.1984 was 62 years 4 months and 27 days and therefore, he was not entitled to benefit of settlement which has been arrived at between the TLA and Mill Company. She also submitted that in such circumstances, there is no need to pay compensation to the workman as per the settlement between the parties.

Learned advocate Mr.D.S.Vasavada submitted that looking to the evidence of the workman at Exh.8, his date of birth is 5.10.1922 and according to the date of birth, he was not aged 62 years when the mill was closed. Therefore, he was entitled to benefit of settlement which arrived at between TLA and the Mill Company to have compensation. He also submitted that there was no oral evidence led by the mill company before the labour court. Ultimately, the labour court has appreciated the evidence led before the labour court and considered the identity card issued by the Mill company and looking to the identity card, birth date mentioned in the said Identity card, when the mill was closed, the workman had not completed 62 years and therefore, he was entitled to benefit of compensation as per the settlement between the parties. This aspect has been examined by the labour court in para-10 of the order in question. The labour court has come to the conclusion that when administration and control of the Mill company was taken by old management on 18th June, 1984, the workman concerned was working with Mill company and this fact came on record as per the deposition of the workman at Exh.8 before the labour court. Therefore, the labour court has rightly allowed the application and the appeal is also rightly dismissed by the Industrial Court considering the evidence of the workman discussed in para-9 of the order passed by the Industrial Court in appeal. The Industrial Court has also discussed this aspect in para-9 that

identity card was issued by the mill company wherein the date of birth is mentioned as 5th October, 1922 and even in the documents at Exh.7/2 the date of birth is recorded is 5th October, 1922. A specific question was put to the workman to the effect that when Mill was closed, at that occasion, he was aged 62 years 4 months and 27 days old, to which, the reply was given in negative. Considering this fact, the Industrial Court has also rejected the appeal filed by the mill company.

This Court had an occation to examine identical cases of different units of the Gujarat State Textile Corporation namely Manju Shree Mills, New Swadeshi Mills etc. This Court in all these matters, considering facts of each case, dismissed the petitions which are also relating to identical facts of the present case. In all these matters, learned advocate Ms. P.J. Davawala was appearing for the Gujarat State Textile Corporation. In this group of matters, special civil application no. 9889 of 1992 was decided on 9thAPril, 2002, Special Civil Application No. 6153 of 1995 was decided on 23rd October, 1997, Special Civil Application No. 2904 of 1995 was decided on 20th January, 2004 and Special Civil Application No. 206 of 1997 with special civil application no. 7387 and 7388 of 1996 were decided on 9th April, 2002. This Court dismissed all the petitions wherein the question involved was the age of retirement of the workmen concerned, whether it was designated day or not. Therefore, considering the order passed by this Court in aforesaid matters and also considering the facts of the present case, according to my opinion, the labour court was right in granting benefit in favour of the respondent workman concerned. In doing so, the labour court and the industrial court have not committed any error warranting interference of this Court.

I have considered submissions made by the learned advocates for the parties and also perused the orders under challenge passed by the labour court and industrial court. It is clear that the labour court has appreciated the facts which came on record and this Court cannot reappreciate the same evidence and facts while exercising the powers under Article 227 of the Constitution of India. Therefore, according to my opinion, the labour court as well as the Industrial Court have not committed any error while passing the orders under challenge. It is concurrent finding of fact given by the both the courts below and therefoer also, in my opinion, no error apparently found on the face of the record committed by the courts below. Ms.Davawala, learned advocate for the petitioner is not able to point out any other infirmity

in the orders in question. Therefore, there is no substance in the present petition and same deserves to be rejected.

In view of above discussion, present petition is rejected. Rule discharged. No order as to costs.

The Registry of this Court is directed to pay back an amount of Rs.15,000/- [ Rupees Fifteen Thousand only ] deposited by the petitioner before this Court in favour of the workman concerned viz. Babubhai Ramajibhai Bhavsar by account payee cheque on identification and verification by the learned advocate Mr.D.S.Vasavada.

Since this Court has rejected the petition filed by the petitioner Mill Company, the Official Liquidator of New Swadeshi Mill of GSTC is directed to pay to the concerned workman Babubhai Ramajibhai Bhavsar the due amount if any not paid so far as per the order passed by the Labour Court and Industrial Court in question after adjusting the payment of Rs.15,000/- in accordance with law.

Date : 20.9.2004 [ H.K.Rathod, J.]

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